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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

AMANDA MARIE KLAAS,

Defendant and Appellant.

F075332

(Super. Ct. No. CRM034951)

OPINION

APPEAL from a judgment of the Superior Court of Merced County. John D. Kiriwara, Judge.

Caitlin M. Plummer, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Jennifer Oleksa, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Defendant was charged with and convicted of felony child endangerment in violation of Penal Code section 273a, subdivision (a) after her two-year-old son Levi was

found dead in his room with his dresser on top of him. On appeal, defendant contends insufficient evidence supports the jury's conclusion the circumstances or conditions of the house were likely to produce great bodily injury or death and she acted with criminal negligence. She also argues the trial court prejudicially erred in admitting evidence of her legal marijuana growing activity and photographs of Levi deceased on the bedroom floor because such evidence was irrelevant and violated Evidence Code section 352 and her due process rights. If her challenges to the admission of evidence were not sufficiently preserved she contends her counsel was ineffective for failing to object. She further asserts the cumulative effect of these errors resulted in prejudice requiring reversal. Finally, she argues the trial court erred in imposing a \$4 "EMS" fee pursuant to Government Code section 76000.10 and a \$40 "security fee" pursuant to Government Code section 68085.5.

We order stricken the \$4 "EMS" fee imposed pursuant to Government Code section 76000.10 and the \$40 "security fee" imposed pursuant to Government Code section 68085.5. In all other respects, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant called 911 after she found her 2-year-old son Levi pinned between his dresser and his mattress. In an interview police conducted with defendant approximately two and a half hours after they arrived at her home, defendant reported that, the day before, she put two-year-old Levi down for a nap around 4:00 a.m. and he woke up at noon. She explained he did not have a set sleep schedule. She put him back down to sleep in his room at around 4:00 or 5:00 p.m. After defendant put him down, she shut the door behind her and listened at the door to see if he cried. Defendant did not go in to check on Levi again until 10:30 a.m. the following morning, approximately 18 hours later. She explained she did not want to wake him. Defendant reported she usually took her sister to school at around 7:10 a.m. but, the morning she found Levi, she had overslept because her phone had died and her alarm did not go off. When she woke up,

defendant went outside to smoke a cigarette. She smoked half a cigarette, put it out, and went to Levi's room where she found him pinned against the bed under a dresser.

Defendant stated she had a license to grow marijuana and a "weed card" because her lower back is fused and it helps relieve the pain. Sometimes, she would take half a Vicodin. Defendant denied smoking marijuana the day she found Levi but admitted she had smoked marijuana the previous morning. She also reported taking half a Vicodin two days earlier. Defendant provided a urine specimen that tested positive for marijuana and the opiates hydrocodone and hydromorphone.

The People introduced photographs of defendant's house from the date of the incident. The photographs depicted piles of clothes, loose cords in the living room, a cord hanging off the kitchen counter, and a room where marijuana plants were growing. They also showed a blow dryer plugged in near a toddler's potty-training seat in the bathroom and a clogged, full toilet. The People also introduced photographs of Levi and the state of his room when the police found him. Levi was lying on the floor next to a queen-size mattress and the dresser that had fallen on top of him. Levi's bed consisted of two mattresses stacked on top of each other with no barrier around them to prevent him from falling. The sheet on the top mattress appeared to have large moisture stains on it. Drawers from the dresser appeared to have fallen out, including one of the top dresser drawers that contained numerous picture frames.

Multiple officers responded to the scene. Detective William Richards recognized the smell of burnt marijuana when he entered the house. He saw an orange chainsaw on the floor a few feet away from the door and a clear bag with marijuana in it. Detective David Brum also smelled a strong scent of burnt marijuana and a lot of foul odors when he arrived. He described the house as being "in disarray." He took photographs of the scene, documenting the state of defendant's house. Detective Brum noted he did not see a baby monitor in Levi's room. Investigating Officer Anthony Cardoza also noted the

house was “very messy and very unkempt.” In addition to piles of clothing, he noticed two small piles of dog feces on the living room floor that did not appear fresh.

At trial, the People called forensic pathologist Mark Super, M.D., who testified he went to the scene and observed Levi’s deceased body and also performed an autopsy on it. In his report, Dr. Super noted Levi’s room was cluttered and dirty, especially the carpeted floor. There was a large dried moisture stain on the sheet that covered the mattress. Levi was wearing a diaper that was soiled with urine and stool and a blue shirt that was dirty, stained from mucus and had fibers, crumbs, and hair on it. Levi had a small amount of feces on his skin and early signs of a diaper rash due to his skin being against moisture and feces for a long time. Levi’s hands were dirty and his fingernails were soiled. Dr. Super estimated Levi had been dead for hours at the time he observed him at the scene. Dr. Super opined Levi died from climbing or attempting to climb on top of the dresser, knocking it on top of his body, and the dresser cutting off his ability to breathe. It was possible Levi could have screamed or made some noise when the dresser initially fell on him.

The defense called forensic pathologist Terri Haddix, M.D., who testified marked lividity occurs after death and is a passive process by which the blood settles to the lowest part of the body. Based on her review of Levi’s photographs and Dr. Super’s report that showed fixed lividity and fully developed rigidity, Haddix concluded Levi had been deceased for many hours when he was found, and it was possible he died before midnight. On cross-examination, Haddix noted Levi’s shirt was covered in fibers, hair, and crumbs. His skin was dirty and reflected poor hygiene, it had hair and fibers on it, and his hands were dirty. She noted Dr. Super’s report stated Levi’s diaper was mildly damp and contained a small amount of formed stool.

The defense presented multiple witnesses who testified Levi had irregular sleeping habits. Defendant’s aunt Celeste Simonsen testified she was very close to Levi and had babysat him overnight on occasion. Levi did not have a set sleeping schedule and it was

not uncommon for him to sleep more than 10 hours at a time. Celeste would not wake Levi up to change his diaper. She noted Levi's door would make a horrible noise when it was opened "like the paint was being ripped apart." Once when Celeste opened the door to check on Levi, he woke up and started crying.

Defendant's sister Sara Klaas testified she babysat Levi a lot and was familiar with his sleeping habits. According to Sara, it was not uncommon for Levi to sleep more than 10 hours. She also noted Levi's door "made a really loud noise any time you would open it." Sara explained they would put their ears on the door and listen for a few minutes to see if Levi was awake so they would not have to open the door. Sara noted defendant's house had a lot of plumbing issues and the roof leaked into the living room. She explained she and defendant found a stray dog a week or two before Levi's death and the dog was not potty-trained when they found him, but they were in the process of training him.

The jury found defendant guilty of felony child abuse in violation of Penal Code section 273a, subdivision (a). The trial court imposed and suspended a four-year term of imprisonment in the California Department of Corrections. It further required defendant to serve five years' probation and serve 12 months in local custody.

DISCUSSION

I. SUFFICIENCY OF THE EVIDENCE

In her first two issues, defendant argues the evidence was insufficient to support her conviction.

A. *Standard of Review*

On appeal, the relevant inquiry governing a challenge to the sufficiency of the evidence "is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1055.) The reviewing court's task is to review the entire record in the light most favorable to the

judgment to determine whether it contains substantial evidence—evidence that is reasonable, credible, and of solid value upon which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Johnson* (1980) 26 Cal.3d 557, 576.)

“The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence.” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) It is the jury, not the appellate court, that must be convinced of a defendant’s guilt beyond a reasonable doubt. (*Ibid.*) If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. (*Ibid.*)

We “presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis ... is there sufficient substantial evidence to support” the jury’s verdict.” (*Ibid.*)

B. Applicable Law

Penal Code section 273a, subdivision (a) is ““intended to protect a child from an abusive situation in which the probability of serious injury is great.”” (*People v. Valdez* (2002) 27 Cal.4th 778, 784 (*Valdez*).) It provides in relevant part: “Any person who, under circumstances or conditions likely to produce great bodily harm or death, ... having the care or custody of any child, ... willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.” (Pen. Code, § 273a, subd. (a).) A violation of section 273a, subdivision (a) ““can occur in a wide variety of situations: the definition broadly includes both active and passive conduct, i.e., child abuse by direct assault and child endangering by extreme neglect.” [Citation.]” (*Valdez, supra*, at p. 784.)

“[C]riminal negligence is the appropriate standard” in cases involving indirect infliction of harm. (*Valdez, supra*, 27 Cal.4th at p. 781; see CALCRIM No. 821.) “Criminal negligence is “aggravated, culpable, gross, or reckless ... conduct ... [that is] such a departure from what would be the conduct of an ordinarily prudent or careful [person] under the same circumstances as to be incompatible with a proper regard for human life.” [Citation.]” (*Valdez, supra*, at p. 783; see also *People v. Sargent* (1999) 19 Cal.4th 1206, 1215.) “Under the criminal negligence standard, knowledge of the risk is determined by an objective test: “[I]f a reasonable person in defendant’s position would have been aware of the risk involved, then defendant is presumed to have had such an awareness.” [Citations.]” (*Valdez, supra*, at p. 783.)

C. Analysis

Defendant argues the child endangerment conviction must be reversed because there was insufficient evidence from which the jury could find beyond a reasonable doubt the conditions in her home were likely to result in great bodily injury or death or that she acted with criminal negligence. In support, she argues “mere inattention or mistake in judgment” does not establish criminal negligence and her behavior was reasonable under the circumstances. She also contends the home, though messy, did not have any condition that was “especially hazardous,” “[n]or did the conditions create [a] risk [of great bodily injury or death] when considered together.” The People respond that multiple conditions in defendant’s home were likely to cause a two-year-old child to suffer great bodily injury or death including a bag of marijuana left out in the living room, the presence of a marijuana grow room, the chainsaw near the front door, loose electrical cords near a pot of water in the living room, and a hairdryer plugged in near a clogged toilet. Additionally, Levi’s bed of mattresses had no guardrails, his 47-inch dresser was not attached to the wall, and there were hanging electrical wires in his room. With regard to criminal negligence, the People assert “an ordinary careful person would not leave a two-year-old child in such an unprotected condition for 17 to 19 hours

without any type of baby monitor and without ever once checking to make sure he was alright or needed to be fed or have his diaper changed.” “[A] reasonable person would have known that leaving a small child unattended and with free movement in a room with tall, unsecured furniture and loose electrical cords would naturally and probably result in harm to that child.” Based on our review of the record, we conclude sufficient evidence supports the conviction.

Here, as the People note and contrary to defendant’s argument, the evidence introduced at trial did not simply depict defendant had a “messy” home. Rather, in addition to the clothes and trash scattered throughout the house, there were numerous hazardous conditions resulting from cords and electrical appliances within Levi’s reach (including a chainsaw). Leaks in the ceiling, the clogged toilet, and the presence of old dog feces in the home further contributed to the home’s unsanitariness and posed risks to Levi’s health. There was marijuana in the air and throughout the apartment. An examination of Levi revealed poor hygiene; he was dirty, covered in crumbs and fibers, and had feces stuck to him. There was also evidence defendant had marijuana and opiates in her system the day Levi was found. Most importantly, defendant, by her own admission, left her two-year-old son unattended and unsecured, by himself, in a room with unsecured furniture and loose wires for a period of approximately 18 hours without ever going in to check on him. And Levi actually died as a result of the circumstances in which he was left. (See *People v. Clark* (2011) 201 Cal.App.4th 235, 245, fn. 6 [“There is no requirement that the victim actually sustain great bodily injury ... but it is a factor to consider”]; see also CALCRIM No. 821 [“if a child does suffer great bodily harm, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed the offense”].)

On this record and viewing the evidence in the light most favorable to the jury’s verdict, we conclude sufficient evidence supports defendant’s felony child endangerment conviction. That is, substantial evidence established (1) the circumstances or conditions

in which Levi was left were likely to result in great bodily injury or death and (2) defendant's conduct was ""such a departure from what would be the conduct of an ordinarily prudent or careful [person] under the same circumstances as to be incompatible with a proper regard for human life."" (Valdez, *supra*, 27 Cal.4th at p. 783; see also *People v. Odom* (1991) 226 Cal.App.3d 1028, 1033 ["deplorable" conditions of home including presence of dog feces, corroded pipes, hole in roof, exposed wires, and garbage, food, and dishes scattered around supported felony child endangerment conviction]; see generally *People v. Harris* (1966) 239 Cal.App.2d 393, 398 ["This is not, as defendant suggests, a prosecution for poor housekeeping. This record discloses conditions of filth and wanton neglect which even the most ignorant and insensitive parent should recognize as hazardous to children"]; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 452 ["[E]ven legal use of marijuana can be abuse if it presents a risk of harm to minors"]; *People v. Little* (2004) 115 Cal.App.4th 766, 771–772 [filthy living conditions and infant left unsecured on bed that lacked railing or restraints to prevent child from crawling or rolling off supported misdemeanor child endangerment conviction].)

We reject defendant's first issue.

II. CHALLENGES TO ADMISSION OF EVIDENCE

Defendant next contends the trial court erred in admitting irrelevant evidence that was more prejudicial than probative in violation of her rights to due process.

A. *Relevant procedural background*

Before trial, defendant moved to exclude evidence of "marijuana which was found at [her] home ... as it [wa]s not relevant to the substantive charge." She argued her growth and possession of marijuana was "legally permissible." The People responded the possession and growth of marijuana went to the "totality of the circumstances" and there was "an extreme paradox" between "the care ... [defendant] show[ed] for her marijuana plants" and "the care [defendant] showed for her son and the rest of the house"

The prosecutor argued such evidence “shows [defendant’s] state of mind and where her priorities are.” The court held evidence of defendant’s marijuana use and growth admissible including seven pictures of the marijuana grow room and the door to the room noting “the People are entitled to make ... whatever arguments they think [are] going to be persuasive.”

Defendant also moved to “prohibit the [P]eople from introducing any photographs of Levi [P.] while deceased taken by law enforcement.” The prosecutor responded she was “not trying to show autopsy photos” or “inflamm[e] [the jury].” Rather, she argued, pictures of Levi when he was found were “an accurate representation of what was depicted that day.” The court noted it “would generally permit pictures of the victim ... assuming [they are] not ... excessively ... grotesque or anything like that.” It concluded two pictures, including a closer picture of Levi, were “relevant” in that they “show[ed] the position of the bed and the victim” and “some injuries that are not so obvious.”

During her opening, the prosecutor noted, after defendant put Levi down “she watered her marijuana plants for the grow that she kept in her house.” She showed the jury a picture of the “marijuana plants that [defendant] so carefully cared for.” During her closing argument, the prosecutor also mentioned evidence of defendant’s marijuana grow room, arguing:

“the reason I want to talk to you about her marijuana grow is because I think it is important that you pay attention to the level of care that she showed for her marijuana grow as opposed to the level of care that she showed for her 25-month-old son. [¶] This is the door outside the marijuana grow sealed off as we saw. These are a couple of pictures of the plants inside. We have plastic to protect them, help them grow. The window is lined with plastic. There’s tape on the window. There’s proper lighting hung. There’s strings to help them grow properly. The defendant has time to do all of that for her marijuana grow, but she does not have time to fix a squeaky door so she can adequately check on her son. It’s incomprehensible, ladies and gentleman. [¶] This is how she cared for her marijuana plants. This is the room she kept them in. This is the room she kept Levi in. You can see things strewn about the floor. His mattress

without anything on it. There was a bathroom here. No safety on the toilet that he could easily get into at any time.”

B. Standard of Review and Applicable Law

Evidence is admissible only if it is relevant. (Evid. Code, § 350.) All relevant evidence is admissible except as otherwise provided by a statutory or constitutional exclusionary rule. (See Cal. Const., art. I, § 28, subd. (f)(2); Evid. Code, § 351.) Relevant evidence is defined as evidence “having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210.) The general test of relevance “‘is whether the evidence tends “logically, naturally, and by reasonable inference” to establish material facts such as identity, intent, or motive.’” (*People v. Bivert* (2011) 52 Cal.4th 96, 116–117.) A court may exclude evidence “if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (Evid. Code, § 352.)

A trial court has broad discretion in determining whether evidence is relevant and whether Evidence Code section 352 precludes its admission. (See *People v. Mills* (2010) 48 Cal.4th 158, 195; *People v. Williams* (2008) 43 Cal.4th 584, 634.) We review for an abuse of discretion a trial court’s rulings on the admissibility of evidence, including those turning on the relevance or probative value of the evidence in question. (See *People v. Lee* (2011) 51 Cal.4th 620, 643; *People v. Hamilton* (2009) 45 Cal.4th 863, 929–930.) “[S]tate law error in admitting evidence is subject to the traditional *Watson* test: The reviewing court must ask whether it is reasonably probable the verdict would have been more favorable to the defendant absent the error.” (*People v. Partida* (2005) 37 Cal.4th 428, 439.) Federal due process is offended only if admission of the irrelevant evidence renders the trial fundamentally unfair. (*Ibid.*)

C. Analysis

Defendant challenges the admission of evidence she grew marijuana including photographs of her marijuana grow room. She also argues the trial court erred in admitting photographs depicting Levi after his death.

1. Marijuana grow room

Defendant first argues evidence she “legally grew marijuana in an area that was inaccessible to her son did not make it any more likely that she ... acted with criminal negligence” and there was “nothing inherently reckless about legally growing marijuana indoors.” She argues such evidence was “irrelevant to the disputed legal question[:]” “whether the care she [] provide[d] for her son constituted criminal negligence,” which is an “objective” question. She further contends, even if such evidence was relevant, any probative value was outweighed by its potential for prejudice. Thus, the evidence should have been excluded under Evidence Code section 352. She asserts such evidence cast her “as a drug user, and risked that the jury would be unfairly tainted by this fact.” She contends any error was not harmless because “of the inflammatory argument made by the prosecution, and the general stigma associated with drugs,” given that the prosecutor introduced “six different pictures of the grow room and us[ed] it as a concluding theme in her argument.” She further contends the admission of such evidence violated her constitutional right to due process. The People respond “[e]vidence demonstrating that [defendant] was growing marijuana inside the home where her two-year-old son lived was highly probative [of] the issue of whether the child was at risk of suffering great bodily harm.” Additionally, it was relevant “to show the care she showed to her plants in comparison to the care she showed to her child.” The People further contend, even if such evidence was admitted in error, any error was harmless given the other evidence of defendant’s marijuana use: “officers smelled burnt marijuana in the home, [defendant’s] urine tested positive for marijuana, she admitted to smoking the drug, and she had left a bag containing marijuana on the desk in the living room.”

We agree with the People that even assuming, without deciding, the trial court abused its broad discretion admitting such evidence because it was irrelevant or more prejudicial than probative under Evidence Code section 352, we cannot conclude it is reasonably probable the verdict would have been more favorable to the defendant absent its admission. Disregarding the photographs of the marijuana grow room and the related testimony and argument, the other evidence established defendant left Levi, a two-year-old, alone in his room without checking on him for a period of approximately 18 hours, from 4:00 or 5:00 p.m. until 10:30 a.m. the following morning. By the time defendant checked on Levi, he had been dead for hours. When police arrived, defendant's house was in disarray—a toilet was backed up; dirty dishes, clothes, and trash were strewn about; multiple foul odors emanated through the house; a chainsaw was found near the front door; and loose electrical cords and old dog feces were found in the house. Levi's bed was two queen-sized mattresses on the ground with no guardrails and his sheet was stained from moisture. When Levi was found his diaper was soiled with urine and stool, his shirt was stained, and his skin was dirty. Police smelled freshly burned marijuana when they entered defendant's apartment; they found a bag with marijuana remnants in the living room; and defendant admitted to smoking marijuana the day before she discovered Levi's body. Defendant's urine also tested positive for marijuana and opiates.

Thus, even if the court had excluded evidence of the marijuana grow room, the jury had before it other evidence, including defendant's own admissions, regarding her drug use. And, considering the other admitted evidence, particularly that the defendant left her two-year-old alone and unsupervised for a period of approximately 18 hours, we cannot conclude there is a reasonable probability the verdict would have been different absent the admission of evidence of defendant's marijuana grow room.

True, the prosecutor discussed the grow room in her opening and closing, but the court instructed the jury: "Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys discuss the case, but their remarks are

not evidence.” We presume the jury followed these instructions. (See *People v. Edwards* (2013) 57 Cal.4th 658, 764 [presuming jury will follow instruction that statements of attorneys are not evidence]; *People v. Bryden* (1998) 63 Cal.App.4th 159, 184 [“Further, the court instructed the jury that questions and statements by the attorneys do not constitute evidence, and the jury is presumed to follow the court’s instructions [citation].”].) Additionally, we cannot conclude it is reasonably probable the prosecutor’s statements about defendant growing marijuana made in the context of her longer argument in which she emphasized the hazardous conditions present in defendant’s home, the fact defendant left Levi unattended for an extended period of time, and that Levi actually died, affected the jury’s verdict. Thus, any potential error related to the admission of evidence of defendant’s marijuana growing activities was harmless. (See *People v. Watson* (1956) 46 Cal.2d 818, 836; see also *People v. Marks* (2003) 31 Cal.4th 197, 226–227 [“we have held the application of ordinary rules of evidence like Evidence Code section 352 does not implicate the federal Constitution, and thus we review allegations of error under the ‘reasonable probability’ standard of *Watson*”].) We also cannot conclude defendant has satisfied the high constitutional standard to show the admission of evidence of the marijuana grow room deprived her of a fair trial and was so prejudicial as to render the trial “fundamentally unfair.”

2. *Photographs of the deceased victim*

Defendant next contends the pictures of Levi “were not relevant to any issue in the case” because “[t]hey did not depict [him] in the position he was found or provide the jury with relevant information about how the accident occurred.” She argues “there was no doubt that both Levi’s body and the dresser had been moved before any pictures were taken.” She further asserts the photographs did not help prove any relevant fact, such as in cases where intent to kill is at issue and photographs of a victim may be relevant to show manner of killing which relates to issues of deliberation, premeditation, and malice. Finally, she argues, even if such evidence was relevant, its prejudicial nature outweighed

its probative value; so, it should have been excluded under Evidence Code section 352. She contends any error was not harmless and the admission of such evidence violated her constitutional right to due process. The People respond: “the fact that Levi’s body was in a different position than when he was initially found ... did not negate the relevance of the photographs because the prosecution was entitled to have the jury observe Levi’s physical condition in a photograph and was not limited to having the witnesses merely describe the injuries in their live testimony.” Having viewed the photographs, we conclude, for the reasons that follow, that the photographs were properly admitted into evidence.

a) The photographs were relevant

Photographs of a crime scene are relevant to show that a crime was committed and to corroborate or illustrate witness testimony about the crime. (*People v. Scheid* (1997) 16 Cal.4th 1, 14–15, 18.) In *Scheid*, our high court rejected the defendant’s argument that a photograph of the murder victim’s “bloodied, lifeless body” (*id.* at p. 15) was irrelevant because the defendant was not at the scene during the actual shooting, the defendant was being prosecuted on a felony-murder theory and thus there was no issue of malice, and the parties were willing to stipulate as to the cause of death and the murder weapon. (*Id.* at pp. 14–15.) The *Scheid* court stated that the defendant’s position was “based upon an inappropriately narrow view of the concept of relevancy.” (*Id.* at p. 14.) The court explained the photograph was relevant even if it was cumulative of other evidence. (*Id.* at pp. 15–16, 19.) The court reasoned that the prosecution was not obligated to prove details solely through witness testimony and was entitled to establish the fact that a murder had been committed “through the use of the most probative and compelling evidence available.” (*Id.* at p. 17.) The *Scheid* court noted the fact “the photograph shows the mattress having been pulled away from the victims’ heads, rather than on top of them as [when their son found them], ... does not render the photograph irrelevant.” (*Id.* at p. 16, fn. 4.)

Here, though defendant was not charged with Levi's death, an element of the child endangerment charge was that the circumstances were likely to cause great bodily injury or death. (See Pen. Code, § 273a, subd. (a).) The two pictures admitted of Levi's body were relevant because they established Levi actually died in defendant's house. They were also relevant to the extent they corroborated Dr. Super's assessment of Levi's condition and placement when Dr. Super encountered him. (See *People v. Michaels* (2002) 28 Cal.4th 486, 532 ["[a]lthough photographic evidence is often cumulative of testimonial evidence, that fact does not require its exclusion, '[b]ecause the photographic evidence could assist the jury in understanding and evaluating the testimony'"].) That the dresser was no longer on top of Levi, as it was when defendant found him, did not render such evidence irrelevant. (See *People v. Scheid, supra*, 16 Cal.4th at p. 16, fn. 4.) Additionally, the photographs provided the jury with a visual of the circumstances of Levi's room relative to his size, which was relevant to the jury's determination of whether the conditions of the residence were likely to cause great bodily injury or death. Accordingly, we cannot conclude the trial court abused its broad discretion in concluding these two photographs were relevant.

b) Danger of prejudice did not outweigh probative value

Defendant next asserts, even if such photographs were relevant, they are "inherently disturbing, inflammatory, and likely to ignite emotional biases against the defendant."

Admission of photographs of a victim lies within the broad discretion of the trial court when a claim is made that they are unduly gruesome or inflammatory. (*People v. Ramirez* (2006) 39 Cal.4th 398, 453.) "'The court's exercise of that discretion will not be disturbed on appeal unless the probative value of the photographs clearly is outweighed by their prejudicial effect. [Citations.]' [Citation.]" (*Id.* at pp. 453–454.)

Here, we cannot conclude the prejudicial effect of the two photographs of Levi clearly outweighs their probative value such that the trial court abused its discretion in

admitting them. We have already concluded the photographs were relevant and, although the pictures are unpleasant, they are not unduly gory or inflammatory and no other circumstances related to their admission into evidence were prejudicial. (See *People v. Scheid*, *supra*, 16 Cal.4th at p. 19; *see also People v. Carter* (2005) 36 Cal.4th 1114, 1168 [“The photographs at issue ‘served to illustrate and corroborate the testimony given by various prosecution witnesses regarding the circumstances of the crime[s]’” and though photos of victims are graphic and unpleasant does not render them unduly prejudicial].) Thus, we cannot conclude the trial court admitted the photographs in violation of Evidence Code section 352 or defendant’s constitutional right to due process. (See *People v. Benavides* (2005) 35 Cal.4th 69, 96 [defendant’s constitutional claims fail on the merits because the photographs were properly admitted]; *People v. Quartermain* (1997) 16 Cal.4th 600, 628–629 [finding no federal constitutional violation where trial court properly admitted evidence under Evidence Code section 352].)

We reject defendant’s second contention.¹

III. CUMULATIVE ERROR

“Under the ‘cumulative error’ doctrine, we reverse the judgment if there is a ‘reasonable possibility’ that the jury would have reached a result more favorable to defendant absent a combination of errors. (See *People v. Williams* (2009) 170 Cal.App.4th 587, 646; *In re Avena* (1996) 12 Cal.4th 694, 772, fn. 32 [‘Under the “cumulative error” doctrine, errors that are individually harmless may nevertheless have a cumulative effect that is prejudicial.’].) ‘The “litmus test” for cumulative error “is whether defendant received due process and a fair trial.”’ (*People v. Cuccia* (2002) 97 Cal.App.4th 785, 795.)” (*People v. Poletti* (2015) 240 Cal.App.4th 1191, 1216–1217.)

¹ Defendant also argues to the extent her challenges to the admission of evidence are waived because her counsel failed to object, she received ineffective assistance. Because we reject these claims on their merits finding no prejudicial error, we need not reach defendant’s ineffective assistance claim.

Here, there is no series of prejudicial errors to cumulate. Accordingly, defendant cannot demonstrate the cumulative effect of the alleged errors resulted in prejudice. (See *In re Reno* (2012) 55 Cal.4th 428, 483 [“As noted, claims previously rejected on their substantive merits—i.e., this court found no legal error—cannot logically be used to support a cumulative error claim because we have already found there was no error to cumulate.”].)

IV. IMPOSITION OF UNAUTHORIZED FEES

In her final issue, defendant argues the trial court erred in imposing a \$4 “EMS fee” pursuant to Government Code section 76000.10 and a \$40 “security fee” pursuant to Government Code section 68085.5. She contends Government Code section 76000.10 makes clear such a fee is only authorized for “a conviction for a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code,” but here defendant was convicted of a violation of the Penal Code. She also argues Government Code section 68085.5 does not authorize any fines or fees. She notes “[a] \$40 security fee is authorized under section 1465.8 fine [sic], which the court imposed.” But the additional \$40 security fee imposed pursuant to Government Code section 68085.5 was unauthorized and should be stricken. The People agree with defendant’s contentions and concede the challenged fees should be stricken.

As defendant notes, section 76000.10 of the Government Code provides in relevant part:

“For purposes of implementing this section, a penalty of four dollars (\$4) shall be imposed upon every conviction for a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code, except parking offenses subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.” (Gov. Code, § 76000.10, subd. (c)(1).)

Here, defendant was convicted of a violation of the Penal Code as opposed to the Vehicle Code or a local ordinance. Thus, Government Code section 76000.10 does not apply, and the fine imposed pursuant thereto should be stricken.

Additionally, consistent with defendant's argument, we cannot conclude Government Code section 68085.5, which directs the deposit and transfer of specified fines and fees, authorizes the additional imposed \$40 security fee. (See Gov. Code, § 68085.5.)

Accordingly, we accept the People's concession and sustain defendant's final issue.

DISPOSITION

The \$4 "EMS fee" imposed pursuant to Government Code section 76000.10 and the \$40 "security fee" imposed pursuant to Government Code section 68085.5 are ordered stricken. The trial court is ordered to amend its records to reflect these changes. In all other respects, the judgment is affirmed.

FRANSON, J.

WE CONCUR:

LEVY, Acting P.J.

PEÑA, J.